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## Illiberal relations: The individual, the state and the dignity of communities under the Hungarian and Slovak constitutions

### ABSTRACT

The article focuses on the conceptualization of personhood and constitutionally protected groups, as well as the relationship between the individual and the state, in particular, the ethno-cultural majority in two EU-members states showing illiberal tendencies, Hungary and Slovakia. The authors show how in Hungary the recognition of individual dignity is conditional on membership in the (most often majority) community, and it is the dignity of communities—not exclusively but including that of the ethnic majority community— that is protected by the new constitution. The Slovak case study focuses on the protection of the Slovak language as a form of protecting the Slovak nation. The analysis shows how a constitutional order considering majority identities its highest value is undermining the protection of fundamental rights in the long run. In this sense, the Slovak example shows what the Hungarian illiberal<sup>1</sup> turn can lead to.

### Introduction

Populist rhetoric questioning the validity of the liberal consensus on human rights and constitutionalism seems to be on the rise in Central Europe. The first explicit break with liberal democracy was announced by Viktor Orbán, Prime Minister of Hungary, in his speech at the 25<sup>th</sup> Bálványos Summer Free University and Student Camp, where he coined the term “illiberal democracy”.<sup>2</sup> His government adopted a new constitution, the 2011 Fundamental law, which undermines the protection of individual rights and liberties. Orbán’s model, based on existing racist and nationalist movements, anti-modernism and anti-cosmopolitanism/Europeanism, has been since followed by Poland, and in some respect Slovakia and the Czech Republic as well. Some central features of the illiberal constitutional order, however, have deeper roots in the region than the recent populist wave.

This article will analyze how Hungary and Slovakia conceptualize personhood and constitutionally protected groups. The first chapter will show how the recent illiberal turn in Hungary resulted in a shift from the protection of individual rights to the protection of dignity which is conditional on belonging to a protected community, including the majority ethnic group. The second chapter will then argue that a similar phenomenon has already existed in Slovakia since the fall of communism: the protection of certain attributes of the majority ethnic nation, such as its language, has been the subject of constitutional veneration and protection to the detriment of holders of competing identities.

While the protection of the state language has recently intensified in Slovakia, as detailed later, the main concern is not the constitutional order’s immediate effect on disfavored identities. Rather, the analysis shows how a constitutional order considering majority identities its highest value is undermining the protection of

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<sup>1</sup> The term illiberal is employed in the commonsensical meaning of the word, without intentions to entangle in the terminological debates concerning “illiberal democracy.”

<sup>2</sup> For the official translation of the speech, see: <[www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk/a-munkaalapu-allam-korszaka-kovetkezik](http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk/a-munkaalapu-allam-korszaka-kovetkezik)>.

fundamental rights in the long run. This has the potential to periodically lead to severe encroachments with individual rights. In this sense, the Slovak example shows what the Hungarian illiberal turn can lead to.

#### I. Communities as primary agents of dignity: The Hungarian case:

This chapter <sup>3</sup> investigates how Hungary's recently adopted constitution, the 2011 Fundamental law and subsequent recent legislation conceptualizes and operationalizes personhood and constitutionally recognized groups. It will be shown how the ethno-cultural majority and certain select minorities are the primary agents of constitutionally recognized dignity.

The broader framework of this assessment is that the illiberal nature of the Hungarian illiberal democracy does not only concern illiberalism vis-à-vis democracy, that is, the dismantling of checks and balances, democratic control mechanisms, the rule of law, or gerrymandering, but also how personhood is conceptualized in the constitutional regime. As our earlier works on intimate citizenship showed,<sup>4</sup> the new constitution operates with outright value preferences. In Orbán's regime, the disregard for individual liberties and freedom primarily (as yet) does not surface on blatant denial of fundamental rights (such as habeas corpus, free speech, et cetera), but, rather, on the theoretical foundations of the constitutional conceptualization of the new political community, which strengthens the communitarian aspects of rights-protection to the detriment of individual freedom and liberties. As we will show, the recognition of individual dignity is conditional on membership in the (most often majority) community, which is defined by the constitutionally cemented value preferences. Also, it is the dignity of communities—not exclusively but including that of the ethnic majority community—that is protected by the new constitution, and not individual freedoms, liberties and autonomy, on which the post-WWII, human rights-based political consensus is built on and which most classic liberal democracies identify as the foundations of their 'social contracts.'

The dignity of communities is itself a concept that is difficult to operationalize in liberal democracies.<sup>5</sup> Even people within the human rights community are routinely involved in theoretical and practical debates on whether legal (and political) protection and activism should centre around civil liberties and limits on government control, or, rather, on equality and human dignity, which requires a more severe restriction of free speech and other civil liberties in order to efficiently protect victimized and vulnerable groups from threats and harm caused by other non-state actors. These internal conflicts come up all the time among human rights activists and scholars, all of whom endorse the same principles: human rights, social justice, and combating violence. The question of hate speech (and say, the

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<sup>3</sup> As far as Andras L. Pap's research is concerned, the project has been partly financed from the SASPRO Programme of the Slovak Academy of Sciences and the People Programme (Marie Curie Actions) European Union's Seventh Framework Programme under REA grant agreement No. 609427.

<sup>4</sup> A.L. Pap, *Democratic Decline in Hungary*, Routledge, 2017., A.L. Pap, 'Who Are "We, the People"? Biases and Preferences in the Hungarian Fundamental Law', in: Z. Fejes, F. Mandák, Z. Szenté (eds) *Challenges and Pitfalls in the Recent Hungarian Constitutional Development – Discussing the New Fundamental Law of Hungary*, Paris: L'Harmattan, 2015, p. 53-75.

<sup>5</sup> See for example A. Sajó, *Constitutional Sentiments*, Yale University Press, 2011.

criminalization of genocide-denial) or the legalization or a client-based abolition of prostitution are the most notable cases. The Hungarian legislator and the constitution makers were not too much concerned about these dilemmas. Constitutional, civil and criminal protections are provided to protect the dignity of certain communities: often the majority, and even against various minorities (be them ethnic, ideological or lifestyle-minorities). They also swiftly ended a two-decade long debate on hate speech, which involved a series of constitutional court decisions.

In its declaration (which incidentally follows the Universal Declaration of Human Rights) stating that *“individual freedom can only be complete in cooperation with others,”* the preamble of the Fundamental Law embraces a markedly collectivist and communal approach to fundamental rights and civil liberties, rather than one based on individual autonomy. This is reinforced by Article G (2) of the chapter entitled Foundations, which states, *“Hungary shall protect its citizens.”* Herbert Küpper argues that here *“the individual ceases to be a subject and is only an object of the state’s protection.”*<sup>6</sup>

The contours of this position emerge even more markedly in the context of freedom of speech and the community-based protection of dignity. Article IX (5) of the Fundamental Law’s chapter on Freedom and Responsibility states that

*[t]he right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community, invoking the violation of their human dignity, as provided for by an Act.*

Protection against offensive speech is itself a highly debated issue, with vastly different standards of jurisprudence on the two sides of the Atlantic, but even where curtailing hate speech and the protection of dignity on the basis of identity is allowed, it mostly only comes up in the context of some sort of documented vulnerability in regards of the protected group, or as a threat of potential or actual exclusion or marginalization. When it comes to restricting the right for free expression, the arguments that carry the greatest weight are not those that seek to justify restrictions on hate speech with regard to general notions of dignity, but rather those that would legitimate such measures on the basis of protecting minorities. That is, they would offer additional protections for groups with a reduced ability to assert their interests, or which, as a consequence of for example, some historical trauma, are prevented from participating in the democratic discourse on a level that is commensurate with the majority’s involvement. The prohibition of hate speech therefore usually serves as a means to right a historical wrong,<sup>7</sup> or as an instrument for protecting groups that cannot ignore the hate they encounter or lack the wherewithal to take effective action against it. It is unclear how being part of the ethnic/national majority or the Hungarian nation in today’s Hungary could have implications that threaten individuals within this majority with a stigma and vulnerability that

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<sup>6</sup> H. Küpper, ‘Paternalista kollektivizmus és liberális individualizmus között: az új magyar Alaptörvényben rögzített emberkép normatív alapjai’. *Közjogi Szemle* vol. 5, no. 3, 2012, p. 9.

<sup>7</sup> R. Uitz, ‘Does the Past Restrain Judicial Review? (Reference to History and Traditions in Constitutional Reasoning)’, *Acta Juridica Hungarica* vol. 41, no. 1-2, 2000, p. 47–78.

they should need special legal protections. A feudal-type unconditional, blank-check protection for communities is not an accepted practice.

In sum, this is an utterly disturbing provision, as under classic constitutional doctrine in Europe, the concept of human dignity is generally intended to protect the individual rather than the community. Additionally, there are recent policies concerning the protection of certain groups, such as women in relation of speech.<sup>8</sup> Be as it may, with concern to new avenues for the protection of the dignity of communities, it is safe to say that it is difficult to justify the protection of the “majority” (be it ethnic or political), and in particular against minorities.<sup>9</sup> Balázs Majtényi even argues that this provision can be used to curtail government criticism if it is interpreted (by agents of the very criticized entity) as a violation of dignity.<sup>10</sup> This is not an impossible scenario. As an analogy, consider for example the arguments defensive courts may use to criticism: if a politician comments a judicial decision, it is often rebutted as a violation of the separation of powers and the autonomy of the court. Seeing criticism as a violation of constitutional competences and authority, especially if it concerns the government or parliament, who, based on a direct electoral authorization, speak on behalf of the nation, is not far-fetched from seeing it as a violation of dignity. Again, here the binding interpretation of what amounts to the violation of dignity lies in the hands of the agent that has been the target of criticism.

### *1.1. Minorities vs. the majority*

Protective measures for racial, ethnic, or national minorities can target a number of different things, such as: socio-economic equality, de facto freedom of religion, the protection of potential pogrom victims and the prevention of brutal ethnic conflicts, decreasing cultural conflicts between majority and genuine minority or immigrant groups, combating racial segregation or apartheid, or race-based affirmative measures of compensatory, remedial, or transitional justice. In line with this, laws protecting minorities may take several forms, ranging from affirmative action and social protection measures to declarations of religious and political freedom to setting forth cultural or political autonomy, or controlling political extremists. The context-dependent meaning of minority-protection may also refer to a widely diverse set of policies, such as equal protection (non-discrimination); participatory identity politics (the political participation of identity-based groups in political decision-making); cultural identity politics (the recognition of identity-based groups in cultural decision-making by the state); the protection of historically rooted identity-based sensitivity (the criminalization of hate-speech, holocaust-denial, et cetera); affirmative action; special constitutional constructions form-fitted for the needs of indigenous populations; policies recognizing claims which mirror the state’s ethnic kin’s Diaspora claims abroad; the right to traditional, pre-colonization life; or simply measures designed to maintain international security.

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<sup>8</sup> See for example: Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry, Official Journal of the European Union, L 378/72, 27 December 2006.

<sup>9</sup> Constitutional Court Decision No. 96/2008 (VII. 3.)

Relying on a peculiar legislative logic, the Fundamental Law's mentioned Article IX states on the one hand that the *"right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community,"* while at the same time in the next clause it is the dignity of individuals, *as members of communities*, which serves as the grounds for restricting the right to free expression.

The constitutional language had been transformed into civil legislation. A newly adopted Civil Code<sup>11</sup> that entered into effect on March 15, 2014 – the day of press freedom – was adopted after several decades of preliminary codification work. The author of the personal rights section in the new Code was László Székely, Orbán's former government commissioner, who serves as the current Commissioner for Fundamental Rights (ombudsman). Article 2:54 (5) gives the individual the right to initiate litigation against the offender in cases involving hate speech<sup>12</sup> – even if according to the general rules of continental civil law, a community is not a legal subject, and hence lacks a personality and is not entitled to the protection of civil law. A civil law relation is (conceptually) always a relationship between two individuals, and thus the legislator's approach does not mesh with the logic of civil law, neither in terms of substantive or procedural law. Nor does it harmonize with classical constitutional law doctrines, for the right to human dignity<sup>13</sup> can only be construed in the context of individual persons.

A further marked example for illiberalism is that the state, via the prosecutor, is authorized to initiate proceedings (in lieu of an individual, in his/her representation, but in the name of the offended community), even if no member of the involved communities feels a need to do so!

The protection of the majority is not without precedent in Hungarian constitutional law. A 2008 Constitutional Court decision written by Justice, later Chief Justice Péter Paczolay (who, in this capacity assisted in Orbán's constitutional capture and the castration of the Court's competences) struck down a 2007 amendment of the Civil Code that was to sanction hate

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<sup>11</sup> Act V of 2013 on the Civil Code

<sup>12</sup> "Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a needlessly serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights ...". It also needs to be mentioned that the term "needlessly offensive" cannot be interpreted in any meaningful way, for with regard to limiting free expression, it appears irrelevant whether a statement or a conduct was – in an everyday sense of the term – justifiably or needlessly offensive. The formulation used in the law suggests that there are the following distinct and relevant degrees of a(n objective) rights infringement: an expression is (subjectively speaking) inoffensive, it is (subjectively) offensive, it is (objectively) justifiably offensive or (objectively) gratuitously offensive.

<sup>13</sup> C. McCrudden (ed.), *Understanding Human Dignity*, Oxford, Oxford University Press, 2014., J. Weinrib, *Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law*, Cambridge, Cambridge University Press, 2016., M. Rosen, *Dignity: Its History and Meaning*, Cambridge, Harvard University Press, 2012., J. Waldron, et al., *Dignity, Rank, and Rights*, Oxford, Oxford University Press, 2012., G. Kateb, *Human Dignity*, Cambridge, Harvard University Press, 2014., D. Kretzmer, E. Klein (eds) *The Concept of Human Dignity in Human Rights Discourse*, The Hague, Kluwer Law International, 2002., C. Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe*, Oxford, Hart Publishing, 2015.

speech only in regards of members of minority communities. The Court argued that it would amount to discrimination if such protections were not awarded to members of the majority.<sup>14</sup>

## 1.2. Identity or vulnerability protection?

The Hungarian Civil Liberties Union<sup>15</sup> argued that the law is discriminative to begin with, as it only protects members of the Hungarian nation, and national, ethnic, racial or religious communities, but gender, gender identity, sexual orientation, disability, and age are not included. Also, the requirement that the infringing speech must be made before a wide public audience is unconstitutionally vague and may even include speech that does not reach a single member of the protected communities.

Hate speech is also regulated by Article 332 of Act C of 2012 on the Criminal Law. This provision establishes that *incitement against a community* is committed by someone who incites to hatred against “*the Hungarian nation; any national, ethnic, racial or religious group; or certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation.*” Here, the Hungarian nation is specified as a protected legal object, unlike in Article 216 codifying hate crime as “*violence against members of the community,*”<sup>16</sup> which does not specify the Hungarian nation as a protected group, but provides for an open ended list by including “*certain societal groups.*”

The question of specifically codified hate crime sanctions for members of a minority (in Hungary it will mostly concern a single, the only substantive ethnic minority, the Roma) in relation of crimes committed against a member of a majority (especially if this involves members of racist hate groups) will be of paramount importance. The issue concerns the core question of defining hate crimes. Can and should any group be protected as a hate crime victim, or should it only apply to members of discrete and insular, underprivileged, vulnerable communities who lack sufficient numbers or power to seek redress through the political process or may face discrimination because of their inherent (unchangeable, fundamental, immutable) characteristics? The debate concerning hate crimes is generally an intriguing one: should the political message the more severe criminalization of bias motivation and the heightened protection be extended to all kinds of identities, or is it intrinsically a minority

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<sup>14</sup> For more on the issue on general see M. Mahlmann, ‘Human dignity and autonomy in modern constitutional orders’, in M. Rosenfeld, A. Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, Oxford University Press, 2012. p. 370–396., 384, 390–91.

<sup>15</sup> Sz. Hegyi, É. Simon, ‘Szólásszabadság elleni fegyver lett belőle’ [It's been turned into a weapon against the freedom of speech], *A TASZ jelenti*, 15 Febr, 2013, [http://ataszjelenti.blog.hu/2013/02/15/baj\\_van\\_az\\_uj\\_ptk-val\\_4\\_resz\\_szolasszabadsag\\_elleni\\_fegyver lett\\_belole](http://ataszjelenti.blog.hu/2013/02/15/baj_van_az_uj_ptk-val_4_resz_szolasszabadsag_elleni_fegyver lett_belole) [2017-06-15]

<sup>16</sup> “Any person who displays an apparently anti-social behavior against others for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, of aiming to cause panic or to frighten others, is guilty of a felony punishable by imprisonment not exceeding three years. (2) Any person who assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, or compels him by force or by threat of force to do, not to do, or to -endure something, is punishable by imprisonment between one to five years.”

protection mechanism? The entire concept of imposing a more severe punishment for bias or hatred has been criticized for introducing “thought policing.”<sup>17</sup>

It needs to be added that legislation in the past years by international and national organizations brought a proliferation of protected grounds, and has been extended to basically any socially recognized identity, and often even open ended lists are used, making reference to “any other status.” While hate crime legislation has been endorsed, and sometimes implicitly or explicitly required by international organizations such as the OSCE, the UN, the EU, and the Council of Europe,<sup>18</sup> this element has never been clarified. In fact, it appears that the language and concept set forth by the Hungarian legislator, where membership in the majority nation qualifies just as well for the heightened protection as membership in a minority community, seems to be in line with international standards.

The Hungarian lawmaker explicitly stated in a commentary on the new Penal Code<sup>19</sup> that hate crimes are identity-protecting and not minority protecting provisions, and this position is supported by several international examples.

Why is then the Hungarian framework problematic? First, while the protection of members of the (national) minority community may be in place in other societies, nothing indicates the necessity (the first step habitually used in constitutional proportionality tests) for a heightened protection for Hungarians in Hungary. No substantiated claims can or have been made for vulnerability, stigma of social inferiority, threat or history of oppression, persecution, or any special form of victimization. Members of the majority community, thus, have no demonstrated need for the symbolic commitment such protections express. (“Ordinary” criminal sanctions suffice.)

Second, there is threat, and even a well-documented practice of abuse: in Hungary, Roma have been systematically prosecuted with racially motivated hate crimes committed against Hungarians, even when no genuine racist bias or hatred has been proven besides a reference to the victims as “Hungarians”, a neutral term used by Roma to signify non-Roma. In several cases Roma have even been charged and sentenced for hate crimes where members of racist hate groups were the victims of the incidents.

The case of Hungarian illiberalism thus shows that even contrary to commitments made by international organizations such as the OSCE and the EU’ Fundamental Rights Agency, the concept of hate crimes should be limited to hate incidents committed against members of minority communities. Instances of members of minority communities being systematically charged with racially motivated hate crimes committed against the majority point to a substantive difference from anti-discrimination legislation, where “the more the better” principle is in place. Here, less is more!

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<sup>17</sup> See for example Larner, J., ‘Hate Crime/Thought Crime, Dissent’, *Dissent Magazine*, Spring 2010, <https://www.dissentmagazine.org/article/hate-crimethought-crime> [2014-04-02]

<sup>18</sup> See for example OSCE, Decision No. 9/09 Combating Hate Crimes, 2009, Council of the European Union, Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law. *Official Journal of the European Union*, L328, 2008, pp. 55-58.

<sup>19</sup> Hungarian Government, *Törvényjavaslat a közrend, valamint az igazságszolgáltatás működésének védelme érdekében szükséges egyes törvénymódosításokról*, T/6218, 2008, [www.parlament.hu/irom38/06218/06218.pdf](http://www.parlament.hu/irom38/06218/06218.pdf) [2017-06-15]

Judicial practice is uneven, and there were high court decisions which adopted the position that hate crime provisions are indeed minority-protection mechanisms. In 2015, the high court<sup>20</sup> nevertheless reiterated that members of the majority community can also be victims of hate crimes.

In the post-2010 era, dignity as constitutional principle and the source of fundamental rights does not seem to be perceived as an inherent characteristic of the individual, but it rather as something that human beings have because of their membership in various communities. The community-based protection of dignity becomes particularly problematic when it serves the protection of the majority community. The Orbán-regime, however, overcame this dilemma by constitutionally enshrining this possibility, or, in an alternative interpretation, this obligation. The Hungarian Constitutional Court held as early as in 1992 that the dignity of communities can be a legitimate reason to curtail the freedom of expression. Interestingly, this principle was actually not applied uncritically in a 2011 decision,<sup>21</sup> when the court struck down certain provision of the media law.

## II. Protecting the dignity of the nation through its language: The Slovak case:

Slovakia's legislation on the use of languages shows that illiberal and legitimate practices are sometimes separated by a thin line. The country adopted its State Language Law in 1995,<sup>22</sup> making Slovak the only "state language" in the country, despite the fact that every seventh citizen had a different mother tongue, 12.4 per cent of them Hungarian. Following international criticism, the new government adopted a Law on the Use of Languages of National Minorities in 1999.<sup>23</sup> The latter is subordinated to the State Language Law and has a much narrower scope, making its implementation difficult.<sup>24</sup> International bodies invested in minority protection have since then regularly criticized Slovakia for not maintaining a proper balance between the promotion of the state language and the protection of minority languages.<sup>25</sup>

The Slovak language laws are not necessarily a sign of illiberalism in themselves. Adopting an official language is common among liberal democracies, and can serve a legitimate aim, as the Slovak government and international bodies emphasize.<sup>26</sup> After all, no country can function without an effective administration using a common language understood by everybody. An official language can be a tool for uniting the citizenry, rather than oppressing

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<sup>20</sup> 3/2015 "büntető elvi döntés" on *Debreceni Ítéltábla Fkhar. II. 248/2014*. See *Bfv.II.590/2012/18* and *EBD 2015 B.3.*)

<sup>21</sup> Constitutional Court Decision No. 165/2011 (XII. 20.)

<sup>22</sup> Zákon č. 270/1995 Z. z. o štátnom jazyku [Law no. 270/1995 Col. I. on the State Language].

<sup>23</sup> Zákon č. 184/1999 Z. z. o používaní jazykov národnostných menšín [Law no. 184/1999 Col. I. on the Use of Languages of National Minorities].

<sup>24</sup> According to §1(4) of the State Language Law in case of contradiction, this Law takes precedence over the provisions of the Law on the Use of Languages of National Minorities.

<sup>25</sup> Last time the country was criticized by the Committee of Experts on the European Charter of Regional and Minority Languages, see: ECRML (European Charter for Regional or Minority Languages), Application of the Charter in the Slovak Republic, 4<sup>th</sup> monitoring cycle, 2016 2, Strasbourg, 27 April 2016.

<sup>26</sup> *Ibid.*, p. 98.



minorities. It is therefore essential to take into account the social context in which these laws were adopted, and the way they operate.

### *II.1 The purpose of adopting a state language*

Concerning the context, it is important to point out that Slovak has been the sole language of public administration in the country (that is, the Slovak part of Czechoslovakia) since World War II.<sup>27</sup> All official acts and documents were issued in Slovak, all proceedings were conducted in Slovak, with informal accommodation of minority languages in oral communication. The country in fact adopted a Law on Official Language in 1990, making Slovak the only official language, giving recognized status to some minority languages.<sup>28</sup>

Making Slovak a state language was thus not driven by the need to ensure that Slovak can be used in official communication. Rather, it stemmed from the rhetoric of nationalistic parties mobilizing their voters around, among others, sentiments against Hungarians, the country's largest ethnic minority.<sup>29</sup> Slovakia became an independent country in 1993, and the country's new Constitution declared Slovak a state language, elevating it above its previously enjoyed status of sole official language.<sup>30</sup> This constitutional provision was implemented by the mentioned 1995 State Language Law, specifying what the change to state language entails.

According to the preamble of the Law, the Slovak language is the expression of sovereignty of the Slovak republic. The Hungarian linguistic community is thus indirectly declared a threat to state sovereignty – and indeed the rhetoric surrounding the Law made this claim very explicit. This is underlined by §1(2), according to which the Slovak language enjoys primacy over other languages used in Slovakia. The Law itself made the use of Slovak mandatory in a wide range of circumstances, going beyond official communication. It, for example, affects all public signs, communication between providers and clients of healthcare and social care services, the language of cultural and educational events, private TV and radio broadcasting, and others.

Without going into details, which is available elsewhere,<sup>31</sup> this short analysis points out that the Law's purpose included restricting communication in Hungarian among Hungarian-speakers in their private sphere, and enforced this goal by financial sanctions. By elevating the language of the ethnic majority to the symbol of the country's territorial integrity, any utterance of Hungarian words a Slovak-speaker has to suffer becomes an attack on the state and the dignity of the ethnic Slovak nation, the only state-constituting element according to the Constitution's preamble.<sup>32</sup>

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<sup>27</sup> Á. Vass, 'A kisebbségi nyelvhasználat helyzete Szlovákiában' [The situation of minority language use in Slovakia], *Létünk* vol. 8, special issue, 2013, p. 74.

<sup>28</sup> Zákon č. 428/1990 Zb. o úradnom jazyku v Slovenskej republike [Law no. 428/1990 Col. on the official language of the Slovak Republic].

<sup>29</sup> J. Fiala-Butora, 'Hungarians in Slovakia and the evolution of Hungarian-Slovakian bilateral relations – improvement or stalemate?', *European Yearbook of Minority Issues*, Vol. 12, no. 1, 2015, p. 160, B. Moorman-Kimáková, *Language-related conflicts in multinational and multi-ethnic settings*, Springer, 2014, p. 191.

<sup>30</sup> Article 6 of the Constitution of the Slovak Republic, Law no. 460/1992 Col.

<sup>31</sup> Ł. Wardyn, J. Fiala, 'The 2009 amendment of the Slovakian state language law and its impact on minority rights', *XXIX Polish Yearbook of International Law*, 2009, p. 153.

<sup>32</sup> Preamble of the Constitution of the Slovak Republic, Law no. 460/1992 Col.

## *II.2 The method of enforcement of language laws*

The State Language Law and the Law on the Use of National Minorities have been amended several times since their adoption, last time in 2011. Instead of providing a detailed description of the current legal landscape, we demonstrate with examples how the laws are currently implemented.

In recent years, several persons were sanctioned for violating the provisions of the State Language Law. In 2010, The Slovak Commercial Inspection issued a fine of 1500 euros to the Slovak regional newspaper *My – Nitrianske noviny* for publishing an advertisement in Hungarian, submitted by a service provider from Hungary.<sup>33</sup> Also in 2010, the National Broadcasting Council issued a fine of 165 Euros to the private regional TV Komárno for a Hungarian advertisement of a local Hungarian newspaper.<sup>34</sup> In 2012, TV Štúrovo was fined for the same offence, for publishing and advertisement of a restaurant from Hungary. On 26 February 2013, TV Štúrovo was fined again for a report on a local traffic accident, where one of the witnesses said two sentences in Hungarian and this was broadcasted by the TV without translation or subtitles.<sup>35</sup>

Apart from known cases of imposed sanctions, which are rare, the threat of sanctions itself can effectively curtail communication in minority languages, of which two examples appeared in recent years. In 2013, the town of Komárno renovated its touristic signs. Although the town has a two thirds majority of Hungarian-speakers, and is located on the border with Hungary and thus receives a lot of international tourists, the signs were displayed only in Slovak according to the requirements of the State Language Law. A local association prepared signs in Hungarian and English, and displayed them below the identical Slovak signs with the municipality's permission. However, in 2014 the Nitra District Office ordered the municipality of Komárno to remove the Hungarian and English signs, otherwise they would receive a fine of 33 900 Euros.<sup>36</sup> The municipality complied, and the signs were taken down. The association which prepared the sign was not involved in the proceeding, therefore it did not have a remedy against the decision – which, formally, was a voluntary act of compliance by the municipality.

In 2014, the organizers of the Gombaszög Youth Festival, which is the largest summer festival of Hungarian-speaking university students in Slovakia, displayed the poster advertising their event in several bus and train stations across southern Slovakia. The poster included a Hungarian sentence ("Take your seat!") which was not translated to Slovak. After notified by indignant passengers, the Ministry of Culture and the Slovak Commercial Inspection initiated proceedings against the State Railways and one bus company, which rented their premises for the poster.<sup>37</sup> They agreed to take the posters down, and thus no fines were issued. The

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<sup>33</sup> All examples are taken from: RHS (Roundtable of Hungarians in Slovakia), Written Comments on the Fourth Report by Slovakia on the implementation of the European Charter for Regional and Minority Languages, Somorja – Šamorín, 15 September 2015, para. 187.

<sup>34</sup> Ibid, para. 196.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid, para. 167.

<sup>37</sup> Ibid, para 187.

Festival's organizers were not involved in the proceedings, and no formal decision was issued, therefore they could not contest the outcome. The process nevertheless severely limited their options to advertise their events the following years, both in terms of methods and venues.

Sometimes threats are not even necessary to make sure the State Language Law is followed in practice. The Ministry of Culture has a unit responsible for overseeing the Law's implementation, dubbed the "language police" in the media. They regularly visit municipalities with a majority of Hungarian-speakers, and are issuing "recommendations" on complying with the State Language Law. If their recommendations are not followed up, threats of sanction follow, but these are rarely necessary. It seems from the few reported cases that they go to absurd details of monitoring language use to find and declare a violation of the law. For example, they took issue with reader's letters in a local newspaper which were not translated to Slovak, criticized the use of a municipality's name bilingually in letterheads and contracts, and even objected to internal minutes using names of attendees in surname-first name order, because they considered it to be a manifestation of Hungarian grammar.<sup>38</sup> Elsewhere they objected to otherwise bilingual invitations to cultural events (the presentation of a Hungarian amateur theater group) and monuments displaying a sentence (a part of a poem) in Hungarian.<sup>39</sup> All these violations were remedied: the letterheads were changed to Slovak-only, readers' letters are not published anymore only if the reader sends a Slovak translation, the amateur theater group refrains from using quotes from poems anymore in their invitations, and the monument was "amended" by extending it with a Slovak translation of the sentence from the Hungarian poem.

What is most troubling about the activities of the language police is their clandestine nature. Since they formally do not issue a decision, an appeal or judicial review is not available against their opinion. This gives them ample opportunity to manipulate the supervised subjects to accept an interpretation of the law they prefer. This is especially worrying since the language legislation is notoriously incomprehensible, with several contradictory provisions within each law, and with the provisions of the State Language Law and the Minority Language Law further contradicting each other. Lack of clarity makes citizens wary about breaching the law, which is enforced by sanctions and a vigilant state apparatus.

### *III.3 (Un)intended consequences: anti-minority hate-speech and hate-crimes*

The effect of the State Language Laws' operation is not simply the limitation of communication in minority languages. Long-term portrayal of Hungarian as a threat to the state and a violation of the dignity of the Slovak nation naturally must have the effect of convincing some of the audience about these truths, who then take matters to their own hands.

Three incidents illustrate this claim. On 26 February 2013, Prime Minister Robert Fico gave an infamous speech in which he declared that "[w]e did not establish our independent state primarily for minorities, however we value them, but mainly for the Slovak state-constituting

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<sup>38</sup> Ibid, para. 207.

<sup>39</sup> Ibid, para. 213.

nation". Although heavily criticized, he refused to specify what his comments meant, and did not apologize for them.<sup>40</sup>

On 19 May 2014, Dárius Rusnák, the head of President Ivan Gašparovič's Public Relations Department, verbally abused two women in a bar in Bratislava for speaking Hungarian. He shouted vulgar remarks at them, commenting on them being Hungarian, and told them to leave. When he was told to behave by two young men who were at the bar, he physically assaulted them.<sup>41</sup> The facts of the case are undisputed, all eye witnesses gave a similar report. The police nevertheless closed the investigation against Rusnák on the ground that vulgar remarks based on ethnicity do not constitute hate-speech; it would have to be proven that the perpetrator had a long-standing negative opinion against the minority in question. The police's reasoning is completely absurd, and makes the prosecution of any hate crime practically impossible.

A possibly even more serious incident occurred on 3 November 2013 in the hospital of Nové Zámky, which is a bilingual town and seat of a district with the third largest Hungarian population. A young Hungarian girl with a good command of Slovak arrived to the emergency room with severe abdomen pain. She was accompanied by her Slovak partner, who also speaks good Hungarian. The girl was examined by a Bulgarian-born doctor, who spoke Slovak with a strong accent, which the girl had difficulty to understand. Her partner offered that he would translate between Hungarian and Slovak, but the doctor refused. He yelled at the girl for not speaking proper Slovak, he refused to examine her, and then wrote on her medical report that "the patient does not speak Slovak, the doctor does not speak Hungarian", with the "diagnosis" that she should be examined elsewhere. The incident was reported to the authorities, but no action has been taken so far.<sup>42</sup>

These selected examples testify about a worrying undercurrent present in Slovak public life: the acceptance of hate speech and the tolerance of hate crimes against Hungarians and specifically the Hungarian language. These range from high-level state officials derogatory comments, to right-wing groups publicly organizing to deface Hungarian street signs, and to incidents such as the brutal beating of student Hedviga Malinová for speaking Hungarian on the street.<sup>43</sup> This phenomenon is underlined by the 2012 research of the Open Society Foundation, according to which 36 per cent of the population agrees (16 per cent strongly agrees) with the statement that members of the Hungarian minority should not speak Hungarian in public, and supports restrictive policies against Hungarians.<sup>44</sup> This includes resentment of bilingual road signs, school certificates, and the use of Hungarian in public administration and in places like shops and hospitals. Although these views might have several sources, the Constitution and State Language Law certainly play a major role in justifying them by expressing the primacy of the Slovak language over others as the embodiment of the country's territorial integrity and the Slovak nation's dignity.

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<sup>40</sup> Ibid, para. 52.

<sup>41</sup> Ibid, para. 63.

<sup>42</sup> Ibid, para. 231.

<sup>43</sup> Ibid, para. 56.

<sup>44</sup> Nadácia otvorenej spoločnosti – Open Society Foundation, Verejná mienka v oblasti pravicového extrémizmu [Public opinion on the right-wing extremism], Bratislava, 2012.

## Conclusions

This article has shown that in Hungary individual dignity (or at least its recognition) is conditional on belonging to a community (foremost one of those explicitly preferred by the constitution). The dignity of communities – including the ethnic majority community – is protected (in ways unknown in liberal democracies) based on civil and criminal law alike, and can and have been applied even against various, ethnic, ideological or lifestyle minorities.

Similarly to the Hungarian situation, the protection of the dignity of the Slovak ethnic nation through the enforcement of language laws shows how illiberal practices can take on the cover of legitimacy. Adopting an official language in itself might not be problematic. If it is done without any apparent reason, other than creating scapegoats and infringing on the rights of minorities, problems arise. If it allows for and encourages enforcement which severely interferes with individual rights, the charge of illiberalism cannot be escaped.

The Slovak State Language Law is not problematic because it always leads to anti-Hungarian rhetoric and action. In fact, since its adoption in 1995, the country has seen several periods of improving and worsening majority-minority relations. In better times, the Law was not enforced, and sanctions were even formally abolished for some years. However, since the Law itself remained in the books, it always serves as a convenient tool for those who want to exploit inter-ethnic animosity for political gains. Regardless of the current state of affairs, until the law is repealed or significantly reformed, it will always loom large on Hungarian-Slovak relations and has the potential to revert any progress made in transforming Slovakia to a modern, multicultural liberal democracy.

The changes in Hungary are relatively recent. It is early to say what impact they will have, how long they will be in force. Despite the fact that the protection of the Hungarian majority in Hungary can be so far seen as a mostly symbolic step without much enforcement, the Slovak example calls for increased vigilance in dismissing the threat it represents. Illiberal laws are not dangerous because they are enforced. Illiberal laws are dangerous because they can be enforced any time. They should not be accepted as part of the normal state of affairs. They should be treated as what they are: an unacceptable part of a liberal democratic order.

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